

DEPARTMENT OF THE NAVY BOARD FOR CORRECTION OF NAVAL RECORDS 701 S. COURTHOUSE ROAD, SUITE 1001 ARLINGTON, VA 22204-2490

> Docket No. 1436-23 Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although you did not file your application in a timely manner, the statute of limitation was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 16 October 2023. The names and votes of the panel members will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your naval record, applicable statutes, regulations, and policies, to include the Kurta Memo, the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD)/mental health condition (MHC) (Hagel Memo), and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional. Although you were provided an opportunity to respond to the AO, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Navy and commenced active duty on 12 December 1973. On 30 July 1974, you were issued an administrative remarks (Page 13) counseling concerning deficiencies in your performance and/or conduct. In August 1974, your command referred you to medical for a

psychiatric evaluation where you stated that you wanted to go home because of family problems and you didn't feel suited to military life.

On 14 August 1974, you received non-judicial punishment for failure to go to your appointed place of duty. You subsequently received notice that you had been recommended for administrative separation due to unsuitability and were eligible to receive a General (Under Honorable Conditions) (GEN) discharge. You waived your right to make a statement and you requested an accelerated discharge, in lieu of awaiting final action. The Separation Authority granted your request and you were discharged, on 22 August 1974, with a GEN.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire to change your discharge characterization of service and your contentions that you had problems adjusting, you were physically assaulted when you entered basic training, you served honorably, and saw some traumatic events. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 21 August 2023. The AO noted in pertinent part:

The Petitioner contends that he had mental health issues and "was assaulted in boot camp." There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He did not mention any assault during the psychiatric evaluation that took place in August 1974. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. Additional records (e.g., active duty medical records containing the events described by the Petitioner, post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, "it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced your NJP, outweighed these mitigating factors. In making this finding, the Board considered your request for accelerated discharge and your statement regarding your belief that you were not suited for military life. The Board also considered the likely negative impact your misconduct had on the good order and discipline of your command.

Further, the Board noted that character of service is based, in part, on overall trait averages which are computed from marks assigned during periodic evaluations. Your trait average was 2.4. An overall trait average of 2.7 was required at the time of your separation for a fully Honorable characterization of service, as such your conduct average was insufficient to qualify for an Honorable discharge.

Additionally, the Board concurred with the AO and determined that there is insufficient evidence of a mental health condition that may be attributed to military service and there is insufficient evidence that your misconduct could be attributed to a mental health condition. As the AO noted, there is no evidence that you were diagnosed with a mental health condition in military service, or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Finally, the Board noted you provided no evidence to substantiate your contentions.

As a result, the Board concluded significant negative aspects of your service outweigh the positive aspects and continues to warrant a GEN characterization. Even in light of the Kurta, Hagel, and Wilkie Memos and reviewing the record liberally and holistically, the Board did not find evidence of an error or injustice that warrants granting you the relief you requested or granting relief as a matter of clemency or equity. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.



Sincerely,